

**BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION**

IN RE:	Mark Atwell, et ux	)	
	Map 084-14-0, Parcel 139.00	)	Davidson County
	Residential Property	)	
	Pro Rated (August 1, 2007)	)	
	Tax Year 2007	)	

**INITIAL DECISION AND ORDER**

**Statement of the Case**

An Appeal has been filed on behalf of the property owner for a pro-rated assessment with the State Board of Equalization. The appeal form was filed on September 17, 2007. The subject property is presently valued as follows:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$24,000	\$216,100	\$240,100	\$60,025

This matter was reviewed by the undersigned administrative law judge pursuant to Tennessee Code Annotated (T.C.A.) §§ 67-5-1412, 67-5-1501 and 67-5-1505. This hearing was conducted on March 3, 2007, at the Davidson County Property Assessor's Office. Present at the hearing were Mark and Deirdre Atwell, the taxpayers who represented themselves, and Mr. Jason Poling, Residential Appraiser, Division of Assessments appeared for the Metro. Property Assessor.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Subject property consists of a single family residence located at 244 Bermuda Drive located in Nashville, Tennessee. The home sits on a .57 acre lot, it was built in 1957 but because of the remodel has an effective age of 1985.

The taxpayer, Mr. Atwell, contends that the property is worth \$175,000. Mr. Atwell based his value on a Comparative Market Analysis of fourteen (14) homes in his area.<sup>1</sup> It shows an "Average" sales price of \$180,609, it should be noted that half of the sales occurred after the pro-rated assessment date. Mr. Atwell goes on to state that, "Most of the homes in his neighborhood are valued at \$82.00 per square foot." Mr. Atwell also attempted to use an appraisal from March of 2006,<sup>2</sup> however, the appraiser was not present to defend his appraisal and while admitted for identification purpose was not considered in the deliberations of this matter.

The assessor contends that the property should be valued at \$240,100 based upon the application of a comparable sales analysis using four comparable sales and two

<sup>1</sup> The information was obtained through a website known as [www.listings.realtracs.com](http://www.listings.realtracs.com). The document has a disclaimer that states "Information believed to be accurate but not guaranteed."

<sup>2</sup> Before the renovations and remodel.



active listings for demonstration purposes. This information was introduced and is marked as collective exhibit number 1 as part of the record in this cause.

The germane issue is the value of the property as of January 1, 2007(Pro-Rated to 8-1-07).<sup>3</sup>

The basis of valuation as stated in T.C.A. § 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values . . . ."

After having reviewed all the evidence in this case, the administrative judge finds that the subject property should be valued at \$ 240,100 based upon the presentation of the Davidson County Assessor.

The administrative judge finds that in an April 10, 1984, decision of the State Board of Equalization in the decision *Laurel Hills Apartments, et. al.* (Davidson County, Tax Years 1981 and 1982), which held that "as a matter of law property in Tennessee is required to be valued and **equalized** according to the "Market Value Theory'," should also be considered in the analysis of this case.

As stated by the State Board, the Market Value Theory requires that property "be appraised annually at full market value and **equalized by application of the appropriate appraisal ratio . . .**" *Id.* at 1.(emphasis added)

The Assessment Appeals Commission further elaborated upon the concept of equalization in the decision they issued in *Franklin D. & Mildred J. Herndon* (Montgomery County, Tax Years 1989 and 1990) (June 24, 1991), when it rejected the taxpayer's equalization argument reasoning in pertinent part as follows:

In contending the entire property should be appraised at no more than \$60,000 for 1989 and 1990, the taxpayer is attempting to compare his appraisal with others. There are two flaws in this approach. First, while the taxpayer is certainly entitled to be appraised at no greater percentage of value than other taxpayers in Montgomery County on the basis of equalization, the assessor's proof establishes that this property is not appraised at any higher percentage of value than the level prevailing in Montgomery County for 1989 and 1990. That the taxpayer can find other properties which are more under appraised than average **does not entitle him to similar treatment.** Secondly, as was the case before the administrative judge, the taxpayer has produced an impressive number of "comparables" but has not **adequately indicated how the properties compare to his own in all relevant respects.** . . . (emphasis added) Final Decision and Order at 2.

See also *Earl and Edith LaFollette*, (Sevier County, Tax Years 1989 and 1990) (June 26, 1991), wherein the Commission rejected the taxpayer's equalization argument

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<sup>3</sup> Pursuant to T.C.A. § 67-5-603 this is a pro-rated assessment.



reasoning that "[t]he evidence of other tax-appraised values might be relevant if it indicated that properties throughout the county were under appraised . . ." Final Decision and Order at 3.

The taxpayers argument/contention to be treated as his neighbors is without merit. The case law is replete with cases that essentially hold that it is of no consequence how much or how little your neighbors' property is valued but being able to demonstrate by competent evidence the fair market value of your own property that is essential in proving the County Boards values are incorrect.

As the Assessment Appeals Commission noted in *Payton and Melissa Goldsmith*, Shelby County, Tax year 2001, in quoting the Tennessee Supreme Court in the case of *Carroll v. Alsup*, 107 Tenn. 257, 64 S.W.193 (1901):

It is no ground for relief to him; nor can any taxpayer be heard to complain of his assessments, when it is below the actual cash value of the property, **on the ground that his neighbors' property is assessed at a less percentage of its true or actual value than his own.** When he comes into court asking relief of his own assessment, he must be able to allege and show that his property is assessed at more than its actual cash value. He may come before an equalizing board, or perhaps before the courts, and show that his neighbors' property is assessed at less than its actual value, and **ask to have it raised to his own**, . . . (emphasis supplied)

Since the taxpayer is attempting to change the *status quo* **the burden of proof is on the taxpayer.** See State Board of Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Control Board*, 620 S.W. 2d 515 (Tenn. App. 1981).

With respect to the issue of market value, the administrative judge finds that Mr. Atwell simply introduced insufficient evidence to affirmatively establish the market value of subject property as of the relevant assessment date pursuant to Tenn. Code Ann. § 67-5-504(a).

There are generally accepted three (3) approaches to value used in determining a viable opinion of value; they are the cost approach, the sales comparison approach and the income capitalization approach.<sup>4</sup> Specific appraisal techniques are applied within the three (3) approaches to derive indicators of a real property's value. Depending upon the use of property is one indicator of the approach that should be used.

The administrative judge finds that rather than **averaging** comparable sales, **comparables must be adjusted.** As explained by the Assessment Appeals Commission in *E.B. Kissell, Jr.* (Shelby County, Tax Years 1991 and 1992) as follows:

The best evidence of the present value of a residential property is generally sales of properties comparable to the subject, comparable in features relevant to value. **Perfect**

<sup>4</sup> *The Appraisal of Real Estate*, 12<sup>th</sup> Edition, 2001, p50



**comparability is not required, but relevant differences should be explained and accounted for by reasonable adjustments. If evidence of a sale is presented without the required analysis of comparability, it is difficult or impossible for us to use the sale as an indicator of value. . .** Final Decision and Order at 2. (Emphasis supplied)

In analyzing the arguments of the taxpayer, the administrative judge must also look to the applicable and acceptable standards in the industry when comparing the sales of similar properties as the taxpayer did here.

The administrative judge finds that the procedure normally utilized in the sales comparison approach has been summarized in one authoritative text as follows:

To apply the sales comparison approach, an appraiser follows a systematic procedure.

1. Research the competitive market for information on sales transactions, listings, and offers to purchase or sell involving properties that are similar to the subject property in terms of characteristics such as property type, date of sale, size, physical condition, location, and land use constraints. The goal is to find a set of comparable sales as similar as possible to the subject property.
2. Verify the information by confirming that the data obtained is factually accurate and that the transactions reflect arm's-length, market considerations. Verification may elicit additional information about the market.
3. Select relevant units of comparison (e.g., price per acre, price per square foot, price per front foot) and develop a comparative analysis for each unit. The goal here is to define and identify a unit of comparison that explains market behavior.
4. Look for differences between the comparable sale properties and the subject property using the elements of comparison. Then ***adjust the price of each sale property to reflect how it differs from the subject property or eliminate that property as a comparable***. This step typically involves using the most comparable sale properties and then adjusting for any remaining differences.

**Reconcile the various value indications produced from the analysis of comparables into a single value indication or a range of values.** [Emphasis supplied] Appraisal Institute, *The Appraisal of Real Estate* at 422 (12<sup>th</sup> ed. 2001). Andrew B. & Majorie S. Kjellin, (Shelby County, 2005)

#### ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax year 2007 (pro-rated effective August 1, 2007):

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$24,000	\$216,100	\$240,100	\$60,025

It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.



Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

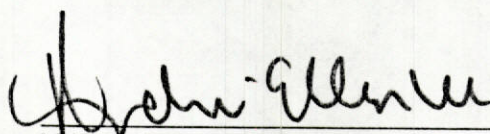
1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or

2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or

3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 31st day of March, 2008.



ANDREI ELLEN LEE  
ADMINISTRATIVE JUDGE  
TENNESSEE DEPARTMENT OF STATE  
ADMINISTRATIVE PROCEDURES DIVISION

c: Mark and Deidre Atwell  
Jo Ann North, Assessor of Property